IN *THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH*

DATE OF DECISION: August 04, 2009

Jitender Pal

.....Petitioner

VERSUS

State of Haryana & others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr.R.K.Handa, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

The petitioner is aggrieved against the action of the respondents in cancelling/withdrawing the promotion granted to him.

Having been appointed as a Constable on 3.3.1989, the petitioner was promoted as Head Constable on 22.9.2008. This order has been cancelled on 3.2.2009 on the ground that this promotion was granted to him during the pendency of a criminal case, entry in regard to which was not made in the character roll. The petitioner

claims that he was falsely named in FIR No.303 dated 17.8.2007 under Section 307, 211, 342, 306 and 34 IPC. In the reply, it is further disclosed that the petitioner is also an accused in another FIR No.252 dated 23.10.2008 under the NDPS Act read with the provisions of Prevention of Corruption Act.

The petitioner was earlier posted in District Police Ambala and was transferred to District Police, Kaithal. Accordingly, entry regarding his involvement in the FIR above mentioned was not available with the police at Kaithal. He accordingly was promoted. This promotion was purely temporary and fortuitous promotion. This order has now been withdrawn when the fact of involvement of the petitioner in FIR was revealed. The petitioner has filed this petition to challenge the order of cancellation.

Can the petitioner have a right to seek promotion during the pendency of the criminal proceedings against him, thus, is an issue which arises in this case. This issue, however, seems to have been fairly settled by the Hon'ble Supreme Court in ***Union of India Vs. K.V.Jankiraman etc.etc.,*** AIR 1991 Supreme Court 2010. It is true that the promotion can not be withheld merely because some disciplinary proceedings are pending against the employee. To deny the same, these must be at the relevant time pending at the stage when charge memo/charge sheet has already been issued. It would not be in the interest of purity of administration to reward an employee with promotion, when he is accused of serious offence and is charge-sheeted.

The grievance of the petitioner, however, is to the effect that once the promotion was granted, the same could not have been

withdrawn or cancelled without giving opportunity of hearing to the petitioner to ensure compliance of principle of natural justice. Whether promotion, which was temporary and purely fortuitous, would create any right in the petitioner is question which may have also to be seen by the respondents. Whether any right would flow in favour of petitioner on account of this promotion order would again be a question requiring consideration. As such, there is no harm if the respondents afford an opportunity to the petitioner in this regard.

The present writ petition is accordingly disposed of with a direction to the respondents to afford a hearing to the petitioner and to pass an order afresh in accordance with law.

August 04, 2009 **(RANJIT SINGH)**
khurmi **JUDGE**